

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

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ANNE POPE, et al.,

Plaintiffs,

-against-

COUNTY OF ALBANY, et al.,

Defendants.
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No. 11-cv-736 (LEK/CFH)

**AFFIRMATION OF MITCHELL A.
KARLAN**

Mitchell A. Karlan, an attorney admitted to practice before this court, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the bar of this Court and a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel to Plaintiffs Anne Pope, Wanda Willingham, Geraldine Bell, Samuel Coleman, Lee Pinckney, Vicente Alfonso, and Elaine Frazier (the “Plaintiffs”) in this action. I make this affirmation in support of Plaintiffs’ Motion for a Preliminary Injunction (the “Renewed Motion”).

PROCEDURAL SUMMARY

2. On June 29, 2011, the Plaintiffs filed this action seeking declaratory and injunctive relief. Among other things, Plaintiffs seek (i) a declaration that Albany County Local Law C of 2011 (“Local Law C”) is void because it violates the Voting Rights Act; and (ii) a permanent injunction enjoining and restraining Defendants County of Albany and Albany County Board of Elections (the “Defendants”) from taking any actions in furtherance of conducting the petition process, gathering signatures for elections, printing ballots, holding, supervising, or certifying any petition or election proceedings; certifying candidates, holding or conducting any further primary or general elections; or implementing, utilizing, or certifying

elections for the Albany County Legislature in any districts created by Local Law C or any districts previously created.

3. On July 15, 2011, Plaintiffs filed a Motion for a Preliminary Injunction.

4. On August 18, 2011, this Court denied Plaintiffs' Motion for a Preliminary Injunction.

5. On May 19, 2012, the United States Court of Appeals for the Second Circuit issued an opinion on Plaintiffs' appeal and addressed the preconditions that Plaintiffs must demonstrate under *Thornburg v. Gingles*, 478 U.S. 31 (1986).

6. On January 28, 2014, this Court granted Plaintiffs partial summary judgment on the first *Gingles* precondition.

SUMMARY OF RECENT EVENTS

7. On November 4, 2014, Plaintiffs submitted proposed findings of fact and conclusions of law (Dkt. 323) and a pre-trial brief (Dkt. 324).

8. On November 6, 2014, the trial in this action began with opening statements from the parties.

9. On November 18, 19, and 24, 2014 trial continued with testimony from three of Plaintiffs' lay witnesses and Plaintiffs' expert witness Dr. Baodong Liu.

10. Trial was scheduled to continue through early December, with its anticipated resolution before the end of 2014.

11. Due to recent events beyond Plaintiffs' (but not Defendants') control, the trial was delayed and the trial schedule has been pushed into 2015.

12. Trial is currently set to resume on December 29, 2014 and continue thereafter.

13. Plaintiffs recognize and appreciate this Court's expressed commitment to provide a prompt decision and judgment on the merits.

14. Simultaneously, and in response to this action, Defendants have initiated a legislative process whereby the County would amend the County Charter to decrease the number of legislative districts in the imminent future (the "Downsizing").

15. The Downsizing would have a direct impact on the majority-minority districts ("MMDs").

16. A public hearing of the Albany County Legislature is scheduled for December 29, 2014 at 7:15 p.m. to consider the Downsizing proposal.

17. Public statements by the leadership of the County Legislature indicate that they intend to move forward with the Downsizing proposal on a highly expedited basis.

18. The County Charter (art. 27, § 2702) and the Municipal Home Rule Law (N.Y. Mun. Home Rule Law § 10(1)(ii)(a)(13)(f)) do not allow for the Downsizing to occur before 2020, absent proper authorization from a court.

19. The Downsizing was only pursued in earnest by Defendants in recent weeks.

20. It was pursued as a strategy to affect the resolution of this case.

21. Plaintiffs bring their Renewed Motion and respectfully request that this Court preliminarily enjoin Defendants from commencing the 2015 campaign and election cycle and initiating the Downsizing, as described in the Renewed Motion, until final judgment in this action is entered.

22. For these reasons, and those stated in Plaintiffs' accompanying Memorandum of Law, Plaintiffs respectfully request that this Court grant their motion for a preliminary injunction.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed this 22nd day of December, 2014 at New York, New York.

/s/ Mitchell Karlan
Mitchell A. Karlan